

MONTANA LEGISLATIVE HISTORY

Chapter 63 19 29

Bill H _____ S 140

Original bill & history ☒ C

H. Committee on Labor and Employment Relations S. Committee on Labor and Employment Relations

Hearing Date(s) Feb 10 ☒ C

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Hearing Date(s) Jan 25 ☒ C

_____ C

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_____ C

Date Out Feb 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 140
 INTRODUCED BY *Healy*
 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY *Low*

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE ROLE OF THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE PROVISIONS RELATING TO RECISSION, ALTERATION, AMENDMENT, OR COMPROMISE OF ORDERS, DECISIONS, AND AWARDS; AND TO INCREASE THE ADDITIONAL AWARD FOR UNREASONABLE DELAY OR REFUSAL TO PAY COMPENSATION; AMENDING SECTIONS 39-71-204, 39-71-611, 39-71-741, 39-71-2905, 39-71-2907, AND 39-71-2909, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-204, MCA, is amended to read:

"39-71-204. Recission, alteration, or amendment by division of its orders, decisions, or awards -- limitation -- effect. (1) The Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division or the workers' compensation judge

shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been made approved by the division, and--the Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the division or the workers' compensation judge shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards."

Section 2. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event the ~~an~~ insurer denies the liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the division workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the division workers' compensation judge."

Section 3. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments -- division approval required. The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and shall rest in the discretion of the division, both as to the amount of such lump-sum payment and the advisability of such conversion. The division is hereby vested with full power, authority, and jurisdiction to allow compromise claims and to approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. ~~Any approval~~ Approval of the division must be in writing ~~and set forth specifically the reasons for such lump-sum or compromise payment.~~ The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim. A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination."

Section 4. Section 39-71-2905, MCA, is amended to

read:

"39-71-2905. Petition to workers' compensation judge. A claimant ~~compensation plan~~ ~~or an employer~~ or an insurer who has a dispute concerning any benefits under chapter 71 or 72 of this title may petition the workers' compensation judge ~~provided for in 2-15-1014 for a determination of the dispute.~~ The judge, after a hearing, shall make a final determination of the dispute and, in accordance with the law on benefits as set forth in chapter 71 or 72 of this title, if the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71."

Section 5. Section 39-71-2907, MCA, is amended to read:

"39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused ~~by an insurer,~~ either prior or subsequent to the issuance of an award, ~~the full amount of the order, decision, or award may be increased by 10% of~~

~~the weekly awards order by the workers' compensation judge~~
~~granting a claimant compensation benefits, the full amount~~
~~of the compensation benefits due a claimant, between the~~
~~time compensation benefits were delayed or refused and the~~
~~date of the order granting a claimant compensation benefits,~~
~~may be increased by the workers' compensation judge by 20%.~~

The question of unreasonable delay or refusal shall be
determined by the workers' compensation judge, and such a
finding constitutes good cause to rescind, alter, or amend
any order, decision, or award previously made in the cause
for the purpose of making the increase provided herein."

Section 6. Section 39-71-2909, MCA, is amended to
read:

~~"39-71-2909. Continuing jurisdiction Authority to~~
~~review, diminish, or increase awards -- limitation. The~~
~~judge has continuing jurisdiction of cases in which a~~
~~petition under 39-71-2905 has been filed and may, upon the~~
~~application petition of any party a claimant or an insurer~~
~~that the disability of the claimant has changed, review,~~
~~diminish, or increase, in accordance with the law on~~
~~benefits as set forth in chapter 71 or 72 of this title, any~~
~~benefits awarded or previously awarded by the judge or~~
~~benefits received by a claimant through settlement~~
~~agreements, except for However, the judge may not change~~
any final settlement or award of compensation more than 4

years after the settlement has been made ~~and except for~~
~~approved by the division or~~ any order approving a full and
final compromise settlement of compensation ~~upon the~~
~~grounds that the disability of the person has changed."~~

-End-

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB #8	1/22/79	2/6/79	2/13/79	2/13/79					
SB #29	1/4/79	1/6/79	1/6/79	1/6/79					
SB #110	1/16/79	1/23/79	2/1/79		2/1/79				
SB #111	1/16/79	1/23/79	2/13/79		TABLED				
SB #140	1/17/79	1/25/79	1/25/79			1/25/79			
SB #141	1/17/79	1/25/79	1/27/79			1/27/79			
SB #150	1/18/79	1/30/79	2/1/79	2/1/79					
SB #155	1/18/79	1/27/79	1/30/79			1/31/79			
SB #161	1/18/79	2/13/79	2/13/79	2/13/79					
SB #180	1/19/79	-----	1/22/79	Referred to Business & Industry Committee					
SB #190	1/22/79	2/6/79	2/6/79			2/7/79			
SB #208	1/24/79	2/1/79	2/1/79			2/1/79			
SB #208	2/10/79	2/13/79	2/13/79			2/13/79			
SB #214	1/24/79	-----	1/31/79	Referred to Judiciary Committee					
SB #239	1/26/79	2/13/79	2/13/79		2/13/79				
SB #252	1/25/79	2/13/79	2/17/79			2/17/79			

Use a separate sheet for Senate, House Bills, and resolutions.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 25, 1979

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Lowe on January 25, 1979, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members were present with the exception of Vice-Chairman Harold C. Nelson who was excused.

Chairman Lowe informed the Committee that the voting on Senate Bill #110 would be taken on Saturday, January 27, 1979, and those who would not be able to attend could vote ahead of time if they so desired.

Chairman Lowe then asked Senator Mehrens to inform the Committee of Senate Bill #140 which was to be considered at this meeting. Senator Mehrens introduced Norman H. Grosfield, Administrator for the Division of Workers' Compensation, to explain the changes in this bill. Mr. Grosfield explained the reasons for these changes and his statement is attached as Exhibit "A".

Mr. Grosfield indicated that the major insurance companies supported this bill and all members of the Advisory Council had concurred in these changes.

Chairman Lowe asked for opponents to Senate Bill 140. Mr. Steve Williams, Anaconda Company, Butte, Montana, had a prepared amendment to this bill and asked the Committee to consider adding "or award" on page 5, line 25.

Jim Oppedahl of the Legislative Council suggested that the amendment read as follows:

1. Page 5, line 25
Following: "~~er~~-award"
Insert: or award

Senator Smith moved the Committee pass the bill as amended. The motion was seconded and the bill passed unanimously.

Chairman Lowe then opened the hearing on Senate Bill 141.

Encl. H

MEMORANDUM BY THE DIVISION OF WORKERS' COMPENSATION
REGARDING SENATE BILL 140 WHICH CLARIFIES THE ROLE
OF THE WORKERS' COMPENSATION JUDGE

The Division of Workers' Compensation, through an advisory council made up of representatives of various interest groups concerned with workers' compensation legislation, proposes the changes as set forth in Senate Bill 140. The Division wishes to explain the reason for the changes in each section of the proposed bill. Reference will be made to the bill's section numbers.

Section 1. Section 1 amends section 39-71-204 of the Workers' Compensation Act by clarifying how final settlements shall be reopened, and by providing that disputes concerning the reopening of settlements shall come under the jurisdiction of the Workers' Compensation Judge. The Division has taken the position that the Workers' Compensation Court does in fact now have jurisdiction to hear disputed matters concerning the reopening of awards. However, the Division believes that this matter should be clarified in the statutes.

Section 2. Section 2 would amend section 39-71-611 by providing that the Workers' Compensation Judge rather than the Division of Workers' Compensation shall set the award of attorney fees and costs in certain cases. Under the law, if an insurer denies liability for a claim or terminates benefits, and it is determined that the action of the insurer was wrong, the insurer must pay reasonable costs and attorney fees to the claimant's attorney. The law was passed prior to the creation of the Workers' Compensation Judge, and it currently provides that the Division shall set the fee even though the Workers' Compensation Judge actually hears the case. The Division believes that the Judge should set the fee in that the Judge has heard the entire case and is in a better position to determine an appropriate fee.

Section 3. Section 3 would amend section 39-71-741 of the Workers' Compensation Act relating to the conversion of biweekly workers' compensation payments into a lump sum. The section would be amended to clarify the procedures utilized to convert biweekly payments into a lump sum and would provide that controversies concerning such conversions would go before the Workers' Compensation Court. The Division considers that the current law requires that such controversies go before the Court and the law would merely be amended to clarify this particular matter.

Section 4. Section 4 would amend section 39-71-2905 by providing that the Workers' Compensation Judge has exclusive jurisdiction to hear workers' compensation disputed matters. The Division has taken the position that the Judge has exclusive jurisdiction under Montana law to hear contested matters that arise under the Workers' Compensation Act, and the amendments would merely clarify this position. Also, the amendments would provide that the penalties that may be assessed against insurance carriers under the Workers' Compensation Act are the exclusive penalties for disputed workers' compensation cases. The Division believes that matters concerning penalties and assessments taken against insurance carriers must be clarified, and this language has thus been submitted for consideration.

Section 5. Section 5 would amend section 39-71-2907 by clarifying when the Workers' Compensation Judge may increase benefits due to an insurer's unreasonable

delay or refusal to pay benefits. Under the current law, it is unclear as to when the penalty applies. The Division believes that the penalty should only apply to benefits paid between the time they were delayed or refused and the order by the Workers' Compensation Court granting benefits. The Division does not believe that benefits should be increased on a continuing basis over the entire award due a claimant. Thus, the section is proposed to be modified in order to clarify the penalty section.

Section 6. Section 6 would amend section 39-71-2909 by clarifying the authority of the Workers' Compensation Court concerning the review of previous settlements or awards granted a claimant. The Division considers that the amendments merely clarify the Judge's authority and make the section more meaningful in the day to day workings of this workers' compensation delivery system.

If anyone has questions concerning the proposed bill, please feel free to contact Mr. Norman H. Grosfield, Administrator of the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, phone 449-2047.

NHG/nmb

STANDING COMMITTEE REPORT

January 25, 19 79

MR. President.....

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 140

Respectfully report as follows: That Senate Bill No. 140 introduced bill was unanimously passed as amended.

1. Page 5, line 25.
Following: "er-award"
Insert: "or award"

And, as so amended
DO PASS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HJR 24	A joint resolution of the senate and the house of representatives of the state of Montana directing the dept. of social and rehabilitation services to adopt a rule...."	1/31/79	Marks	2/8/79	DO NOT PASS	2/13/79
HJR 25	A joint resolution of the senate and the house of representatives of the state of Montana directing the Div. of Workers' Comp. of the MT. Dept. of Labor and Industry to adopt a rule. "	2/2/79	Menahan	2/8/79	DO NOT PASS	2/13/79
SB 140	An act to clarify the role of the workers' compensation judge, defining his jurisdiction and the nature of remedies he may impose; to revise the provisions relating to recission...."	2/1/79	Mehrens	2/10/79	DO PASS	2/10/79
SB 141	An act to generally revise the laws relating to workers' compensation; amending sections 30-71-208, 39-71-210....."	2/3/79	Mehrens	2/10/79	DO PASS	2/10/79
HB 515	An act to amend the law concerning the public employees' retirement system to make the assumption by a contracting employer of the members' contributions a subject of .."	2/2/79	O'Connell	2/8/79	DO NOT PASS	2/8/79
HB 527	"An act to clarify the provisions relating to exemptions of teachers under the authority of the department of institutions from the state pay plan; amending section 2-18-307, MCA."	2/2/79	Keedy	2/10/79	DO NOT PASS	2/15/79

HB 527 does not do what it is intended to do and is technically incomplete. He said this bill does not help matters, but makes them worse. Questions were asked by the committee.

HOUSE BILL 564: Rep. Dozier, sponsor, said the bill would require any labor agreement between a school district and an exclusive representative to include a grievance procedure that culminates in final and binding arbitration. At the present time, such a procedure is optional.

Proponents were: Phil Campbell, MEA, Helena. Owen Nelson, MEA, said the bill would give all public employees the right to enforce their collective bargaining agreements.

Opponent, Wayne Buchanan, School Boards Administration, said he sees lots of problems with the bill.

SENATE BILL 140: Senator, Mehrens, sponsor, introduced Norm Grosfield, Division of Workers' Compensation, who explained the bill. Mr. Grosfield said the bill would change certain provisions regarding workers' compensation judges (exhibit 4).

Proponents were: George Wood, Montana Self-Insurers Association, and James Murry, AFL-CIO. There were no opponents. Questions were asked by the committee.

SENATE BILL 141: Senator Mehrens, sponsor, introduced Norm Grosfield, Division of Workers' Compensation, who explained the bill to the committee (exhibit 5) and offered an amendment (exhibit 6).

James Murry and George Wood said they would support the bill with amendments. There were no opponents. Questions were asked by committee.

EXECUTIVE SESSION

SENATE BILL 140: It was moved by Rep. Fagg that SB 140 BE CONCURRED IN. Motion passed unanimously.

SENATE BILL 141: It was moved by Rep. Porter that SB 141 AS AMENDED, BE CONCURRED IN. Motion carried unanimously.

SENATE BILL 29: It was moved by Rep. Fagg that SB 29 BE CONCURRED IN. Motion carried. Rep. Stobie voted no.

HOUSE BILL 362: It was moved by Rep. Underdal that HB 362 DO NOT PASS. Motion carried unanimously.

HOUSE BILL 548: It was moved by Rep. Harrington that HB 548 DO PASS. Motion carried unanimously.

HOUSE BILL 540: It was moved by Rep. Manning that HB 540 be held for a fiscal note. Motion carried unanimously.

HOUSE BILL 564: Rep. Dozier said he would like to have more research done on HB 564.

HOUSE BILL 527: It was moved by Rep. O'Connell to hold HB 527 until they heard from the select committee on the pay plan. Motion carried unanimously.

HOUSE BILL 323: There were questions regarding the wording and intent of the amendments. Rep. Harrington said he wanted to get with Reps. Scully and Ramirez for clarification.

HOUSE BILL 333: It was moved by Rep. Harrington that HB 333 be passed for the day. Motion carried unanimously.

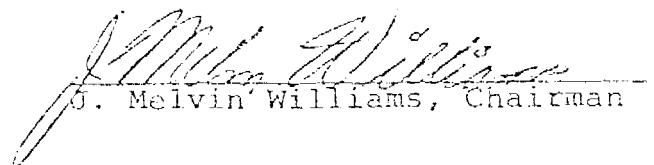
HOUSE JOINT RESOLUTION 25: It was moved by Rep. Manning that HJR 25 be passed for the day. Motion carried unanimously.

HOUSE BILL 143: The committee decided to delay action on HB 143 because too many members were absent.

The following were assigned to carry senate bills:

SB 140 - Rep. Dozier
SB 141 - Rep. Manning
SB 29 - Rep. Harrington

Meeting adjourned at 2:20 p.m.


J. Melvin Williams, Chairman


Lois South, Secretary

SENATE BILL NO. 140

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE ROLE OF
THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION
AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE
PROVISIONS RELATING TO RECISSION, ALTERATION, AMENDMENT, OR
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the same has been made ~~approved by the division~~ and--the
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1 ~~the weekly award order by the workers' compensation judge~~
 2 ~~granting a claimant compensation benefits, the full amount~~
 3 ~~of the compensation benefits due a claimant, between the~~
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 9 finding constitutes good cause to rescind, alter, or amend
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 19 that the disability of the claimant has changed, review,
 20 diminish, or increase, in accordance with the law on
 21 benefits as set forth in chapter 71 or 72 of this title, any
 22 benefits awarded or previously awarded by the judge or
 23 benefits received by a claimant through settlement
 24 agreements, except for ~~However, the judge may not change~~
 25 any final settlement or award OR AWARD of compensation more

1 than 4 years after the settlement has been made--and--except
 2 for approved by the division or any order approving a full
 3 and final compromise settlement of compensation--upon--the
 4 grounds ~~that the disability of the person has changed."~~

-End-